Supreme Court, U.S.
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NO. 84-895

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

MICHAEL EVANS,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States Supreme Court has jurisdiction in the instant case to decide the question of sufficiency of the evidence where the decision of the Illinois trial and appellate courts below rests on the adequate and independent state ground that under Illinois law the evidence established that petitioner was proven guilty beyond a reasonable doubt.

2. Whether the United States Supreme Court has jurisdiction to review the instant case on the issue of excessiveness of sentence where there is no articulation of any constitutional infringement of petitioner's rights, where the Illinois Appellate Court's resolution of the sen-

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COURT OF ILLINOIS, FIRST DISTRICT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Appellate Court of Illinois, First District, affirming the petitioner's convictions on three counts of reckless homicide is reported as People v. Michael Evans, 124 Ill. App.3d 634, 464 N.E.2d 1083 (1st Dist. 1984).

JURISDICTION

In his Petition for Writ of Certiorari, petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. §1257(3). He claims that because his guilt on the three charges of reckless homicide was not proven beyond a reasonable doubt at trial or on appeal and because his sentence was excessive, his right to due process under Amendment XIV to the Constitution of the United States was violated by the trial and appellate courts below. Because the determination of petitioner's guilt at the trial and appellate levels below and the determination of the sentence imposed were based on adequate and independent state grounds, the respondent believes that this Court lacks jurisdiction to decide the issues of the sufficiency of

the evidence and the excessiveness of the sentence. Moreover, because the evidence at trial clearly established petitioner's guilt beyond a reasonable doubt and because the sentence imposed fully complied with the Illinois statutory sentencing scheme, the respondent believes that the petitioner has failed to show any deprivation of his constitutional rights or any other good reason for this Court to exercise jurisdiction to review the judgment in question by granting the petition for writ of certiorari. Accordingly, the petition should be denied.

STATEMENT OF THE CASE

After a bench trial in the Circuit Court of Cook County, Illinois, the petitioner, Michael Evans, was convicted of three counts of reckless homicide. (R. 518)[1] He was sentenced to 30 months probation, with the first 6 months to be served by straight time imprisonment in the Cook County Department of Corrections and the last 90 days to be served by periodic imprisonment on weekends. (R. 623-624; R. C702-C703) The petitioner appealed from the judgment of conviction and the sentence to the Appellate Court of Illinois, First District. (R. C709)

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1 "R." designates the transcript of record of the petitioner's trial; "R. C." designates the common law record.

The Appellate Court afffirmed the petitioner's conviction but remanded the case for resentencing. His petition for leave to appeal to the Supreme Court of Illinois was denied.

The Petitioner's Trial

At petitioner's bench trial, the prosecution's evidence established that on March 24, 1982, at about 9:30 p.m., an automobile driven by co-defendant John Best collided with an automobile driven by Sherry Kasee on Torrence Avenue in Calumet City, Illinois. As a result of this collision, three people were killed: Ronald Gibbs and Patricia Koerner, passengers in Best's vehicle, and Sherry Kasee. These facts are undisputed.

The prosecution's theory of the case was that petitioner Evans and co-defendant

Best drove their respective automobiles recklessly and at excessive speeds in a manner of driving which was likely to cause the death of some individual, while engaged in a race between themselves (commonly referred to as "drag racing") on a street designated for local motor vehicle traffic in Cook County, Illinois. (R. C641-C650)

Prosecution witness Catherine Campbell testified that on March 24, 1982, at approximately 9:30 p.m., she was seated in her Ford van waiting for the traffic light to change at the intersection of 159th and Torrence Avenue in Calumet City, Illinois. Her van was facing north, occupying the east-center lane of northbound Torrence Avenue. At her location, Torrence Avenue consisted of four northbound lanes. (R. 101) The western-most lane, to the far left of Campbell, is a left hand turning lane; the lane next to Campbell on her

immediate left and the lane occupied by Campbell are the two center lanes for continuing north on Torrence Avenue; the lane next to Campbell on her immediate right is a lane used for either turing right onto 159th Street, to proceed east, or for continuing north and eventually merging with the east-center lane of Torrence Avenue. (R. 101-103)

While waiting for the traffic light to turn green, Campbell noticed a blue Plymouth automobile pull up in the lane to her immediate left, the west-center lane of northbound Torrence Avenue. This car was driven by petitioner and had three other passengers in it. (R. 103-104) At the same time, a white Plymouth automobile pulled up in the lane to Campbell's immediate right, the far east lane of northbound Torrence Avenue. (R. 103-104)

This car was driven by co-defendant Best and had three other passengers in the car, including Ronald Gibbs and Patricia Koerner. (R.157-158)

Just before the traffic signal turned green, Campbell noticed that the Plymouths on either side of her were each inching forward to a point beyond the painted traffic lane establishing the southern boundary of the intersection. (R.105) As soon as the light turned green, both cars accelerated forward at a high rate of speed. (R. 106) Campbell began to accelerate at a slower rate of speed, but soon had to "back off" because co-defendant Best immediately began to merge into her lane (east-center) as he drove through the intersection heading north. (R. 106-107)

Campbell observed the two cars speed side by side northward up Torrence Avenue at speeds which she estimated at between 65

and 70 miles per hour. (R. 109) Campbell also testified that for 3 years she had assisted her husband in his career as a professional auto racer. (R. 100)

Diane Dougall, a passenger seated behind petitioner, estimated that petitioner's car was traveling at "55, or maybe more" miles per hour. (R. 163) Dougall also testified that when petitoner accelerated from the traffic signal, she was initially scared because the tires on petitioner's car squealed and because she was pushed back into her seat by the swift acceleration. (R. 159, 163)

The stretch of Torrence Avenue upon which petitioner and co-defendant Best were drag racing was a very dark, slightly bumpy, asphalt-paved road straightaway with two lanes northbound and two lanes southbound, separated by a 2-foot-wide, 2-inch-

high solid concrete median. (R. 36, 67, 70, 72) The speed limit on that particular road was either 40 or 45 miles per hour. (R. 36, 37)

Because of the poor lighting of that road, Campbell lost sight of the two automobiles except for their taillights. (R. 109-110) Shortly thereafter, when the vehicles were less than one-half mile away, she noticed that the taillights of the vehicle which petitioner was driving veered over into the lane occupied by co-defendant Best's vehicle. (R. 110) About 3 or 4 seconds later, Campbell arrived at about where she saw the taillights merge and noticed Best's car smoking. His car appeared to be hooked to a green car in the southbound lanes of Torrence Avenue. This accident scene was located on Torrence Avenue approximately one-half mile north of 159th Street. (R. 112)

George Zorich testified that he was driving southbound on Torrence Avenue about one-half mile north of the intersection of 159th Street and Torrence Avenue at about 9:30 p.m. on March 24, 1982. (R. 182-183) At that point he observed Best's car skid across the northbound lanes into the southbound lanes of Torrence Avenue and crash into a Chevrolet driven by Sherry Kasee as she was driving southbound. (R. 183-184) After colliding with Kasee's car, Best's vehicle flew into the air and struck Zorich's vehicle on the hood. Zorich's car was then hit from behind by another southbound automobile. (R. 184)

Officer Peter Miller of the Calumet City police department testified that he was called to the scene of the above accident on the night in question. (R. 32) Upon his arrival, he noticed that Kasee's car had very heavy front-end damage. (R.

34) He also saw that Best's vehicle, which was now in the southbound lane of Torrence Avenue, had very heavy rear-end and right side damage. (R. 35) Best's car left skid marks, ending at the collision site. The skid marks measured 150 feet in length and extended across the median from the northbound lanes into the southbound lanes of Torrence Avenue. (R. 43-44)

Upon reaching Best's automobile, Officer Miller saw the body of Patricia Koerner, a passenger in Best's car, pinned againt the back seat. (R. 39, 50) Shortly thereafter, he noticed the body of Ronald Gibbs, another passenger in Best's car, lying 20 to 30 feet away in a nearby wooded area. (R. 43, 60) Sherry Kasee also died as a result of injuries sustained when her car was struck by Best's vehicle. (R. 211)

Petitioner's defense was simply that that he and co-defendant Best were not "drag racing" or recklessly driving and that Best's loss of control of his vehicle was not a result of the petitioner's maneuvering of his vehicle on the street. In explaining why his wheels "squealed or chirped" when he accelerated his automobile, petitioner stated that his oil pressure was low and that in order to raise that pressure he had to disengage his clutch and "rev" the motor. (R. 414) As he drove away from the traffic light, he "pushed in the clutch and revved the motor to bring the oil pressure up." Then he let the clutch out and the wheels "chirped." (R. 400, 414-415) According to petitioner, this was a standard procedure for his car. (R. 400)

Petitioner also explained away the testimony of Catherine Campbell concerning

her observations of the merging automobile taillights. Defendant testified that because the left northbound Torrence Avenue lane was "bumpy" and because his car had worn tires, he preferred to drive in the right northbound lane. (R. 398) So he changed lanes from the west northbound lane to the east northbound lane about a "block or so" in front of Best's car. (R. 402, 420) Immediately after he changed lanes, he looked into his rear-view mirror and saw Best's car "getting hit." (R. 420) Petitioner did not know what caused Best's accident. (R. 402)

On his behalf, petitioner presented 17-year-old Tom Juricic as a witness. (R. 296) Juricic was petitioner's classmate. (R. 302) On the evening of the incident, Juricic was seated in his automobile facing north in the far right (eastern-most) lane at the intersection of 159th and Torrence

Avenue (R. 296-300)

He observed Best's car in front of him and Campbell's van in the lane to the left of Best's car. (R. 298) After the light changed and he started to make a right turn to proceed eastbound on 159th Street, Juricic heard the chirping or squealing of tires. This noise did not come from the car immediately in front of him, i.e., Best's car. (R. 301) He then turned his head and observed petitioner's car accelerating, but he did not notice anything unusual about the acceleration. (R. 301-303)

However, Juricic did state on cross-examination that when he turned to look at where he heard the squealing, he noticed that petitioner's car was a full car length in front of the van and Best's car. (R. 313) Juricic also stated that he never saw any of the vehicles again after they passed

the far north end of the intersection because he continued to complete his right-hand turn. (R. 310, 314)

Co-defendant Best did not testify at trial.

At the close of petitioner's bench trial, the trial court found both petitioner and co-defendant Best guilty on the three charges of reckless homicide. Petitioner was sentenced to 30 months probation with two special conditions: (1) that he serve the first 6 months in the Cook County Department of Corrections, and (2) that he serve the last 90 days of the probation incarcerated only on weekends. (R.623-624) Petitioner appealed from his convictions and sentences to the Appellate Court of Illinois. (R. C709)

The Petitioner's Appeal

The Appellate Court of Illinois, First District, affirmed the petitioner's convictions but vacated and remanded for resentencing as to the special conditions portion of his probation sentence in an opinion dated May 8, 1984. (The Opinion is set out in full in the Appendix of the Petition for Writ of Certiorari, pages 2-34.) The Appellate Court ruled that the trial evidence was sufficient beyond a reasonable doubt to establish petitioner's guilt. (Appendix at 12-23) Noting that the petitioner's automobile was not directly involved in the multi-vehicle collision which caused the three deaths on March 24, 1982, the Appellate Court held that petitioner was, nevertheless, legally accountable for those deaths because the evidence clearly established that peti-

tioner and co-defendant Best did engage in a "street drag race." (Appendix at 14-17) As a result of this illegal act of drag racing, in which petitioner and co-defendant drove their automobiles in a reckless and dangerous manner, an accident ensued and the lives of three human beings were unlawfully taken. (Appendix at 19)

The Appellate Court also addressed the petitioner's contention that the special conditions of his probation involving incarceration were unjustified in light of mitigative circumstances. (Appendix at 23) The Appellate Court decided that according to the Illinois statutory sentencing scheme, the trial court could have properly sentenced petitioner to either a penitentiary sentence (a determinative term of anywhere between 1 and 3 years in the state penitentiary) or a term of probation of up to 30 months. If probation were the sen-

tence imposed (as it was here), the trial court could have imposed special conditions. The Appellate Court noted that among the conditions the trial court properly could have imposed in the instant case were either (1) a condition that up to 6 months of the probation be served as straight time in the county jail, or (2) a condition that up to 18 months of the probation be served as periodic imprisonment, or (3) that a combination of straight time in jail and periodic imprisonment, as long as the straight time did not exceed 30 days. However, the Appellate Court also found that where, as a special condition of probation, straight time imprisonment exceeding 30 days was mandated, no periodic imprisonment could be imposed. Thus, the Appellate Court concluded that the trial court could not impose straight time imprisonment of 6 months coupled with 90 days

periodic imprisonment. Accordingly, the Appellate Court vacated the special conditions of petitioner's probation and remanded the case for the trial court to determine which special condition should be imposed. (Appendix at 24-33)

From the affirmance of his convictions and part of his sentence by the Appellate Court, the petitioner sought leave to appeal to the Supreme Court of Illinois. On October 2, 1984, the Supreme Court of Illinois denied his petition for leave to appeal. (Appendix at 1)

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

I.

THIS COURT LACKS JURISDICTION TO DECIDE THE INSTANT CASE ON THE QUESTION OF SUFFICIENCY OF THE EVIDENCE WHERE THE DECISIONS OF THE ILLINOIS TRIAL AND APPELLATE COURTS BELOW REST ON AN ADEQUATE AND INDEPENDENT STATE GROUND THAT UNDER ILLINOIS LAW THE EVIDENCE ESTABLISHED THAT PETITIONER WAS PROVEN GUILTY BEYOND A REASONABLE DOUBT.

The petitioner contends that his constitutional right to due process was violated by the trial and appellate courts below because the evidence presented at trial failed to prove beyond a reasonable doubt that he had driven recklessly or caused the fatal automobile accident on the night in question. (Petition for Writ of

Certiorari at 26)

The respondent asserts that the United States Supreme Court lacks jurisdiction to decide the issue of the sufficiency of the evidence in the instant case because the determination of petitioner's guilt at the trial and appellate levels below was based on adequate and independent state grounds. Furthermore, the evidence presented at trial clearly established petitioner's guilt beyond a reasonable doubt and the Illinois Appellate Court agreed. Accordingly, petitioner was not deprived of his constitutional right to due process and his petition for writ of certiorari must be denied.

The United States Supreme Court has long held that it will not grant certiorari to review evidence and discuss specific facts (United States v. Johnston, 268 U.S. 220, 227, 45 S.Ct. 496, 69 L.Ed.2d 925

(1925)), nor will it grant certiorari to review state court judgments that are based on adequate and independent state grounds. Herb v. Pitcairn, 324 U.S. 118, 125, 65 S.Ct. 459, 89 L.Ed. 789 (1945). Moreover, the United States Supreme Court has expressly declared that it will not review state court cases where it is not affirmatively and clearly shown that the state court decision was decided on a federal question and that that federal question was essential to the disposition of the case. Id. at 126.

In the case at bar, the decisions of the Illinois trial and appellate courts below rested on adequate and independent state grounds. It has long been held by the Illinois courts that a defendant is presumed innocent until proven guilty and he is not required to present evidence to establish his innocence. Ill. Rev. Stat.

1983, ch. 38, sec. 3-1; People v. Coulson, 13 Ill.2d 290, 295, 149 N.E.2d 96 (1958). If the defendant takes the stand, denies guilt, and offers an explanation for his actions, he does not automatically establish reasonable doubt. People v. Spagnolia, 21 Ill. 2d 455, 458, 173 N.E.2d 431 (1961). Proof of defendant's guilt does not require proof beyond any possibility of a doubt. People v. Williams, 66 Ill.2d 478, 485, 363 N.E.2d 801 (1977). In weighing the evidence the trier of fact is not required to disregard the natural inferences that flow normally from the evidence. People v. Kelly, 29 Ill.2d 53, 59, 193 N.E.2d 21 (1963).

The testimony of a single credible witness, even if it is contradicted by the accused, may be sufficient to sustain a conviction. People v. Cox, 22 Ill.2d 534, 539, 177 N.E.2d 211 (1961). A conviction

may be sustained upon circumstantial as well as direct evidence. People v. Bernette, 30 Ill.2d 359, 367, 197 N.E.2d 436 (1964). While the circumstantial evidence relied upon must not give rise to any reasonable hypotheses of innocence, the trial court is not required to search out a series of potential explanations compatible with innocence and elevate them to a status of reasonable doubt. People v. Rhodes, 85 Ill.2d 241, 249, 422 N.E.2d 605 (1981).

In a bench trial, as was the case at bar, the determination of the witnesses' credibility and the weight to be afforded their testimony is solely the function of the trial judge; and that determination will not be disturbed unless it is palpably erroneous. People v. Curry, 56 Ill.2d 162, 174, 306 N.E.2d 292 (1973). A trial judge is not obligated to believe the testimony of a defense witness over the

testimony of the prosecution's witnesses. People v. Berland, 74 Ill.2d 286, 307, 385 N.E.2d 649 (1978). The reviewing court will not set aside the trial court's determination as to the credibility of the witnesses and the resolution of conflicting evidence, unless the record establishes a reasonable doubt of guilt. People v. Clark, 30 Ill.2d 216, 219, 195 N.E.2d 631 (1964).

The evidence relied upon by the Illinois trial and appellate courts below established petitioner's guilt beyond a reasonable doubt. Contrary to petitioner's contention that the trial court relied exclusively on Catherine Campbell's testimony (Petition for Writ of Certiorari at 28), the record reveals that the trial court also relied on the testimony of Diane Dougall (one of the passengers in petitioner's car), Tom Juricic, George Zorich, and Officer Peter Miller. (R. 516-517)

In affirming petitioner's conviction, the Appellate Court cited, in particular, the testimony of Catherine Campbell and Diane Dougall. That testimony established that petitioner and co-defendant began their race at the traffic light at 159th Street and Torrence Avenue, accelerated at a high rate of speed from that intersection. Shortly thereafter, petitioner abruptly changed lanes, cutting off co-defendant, which caused the eventual accident. (Appendix at 17-18) The Appellate Court also cited petitioner's denial of the drag race accusation. (Appendix at 17) The Appellate Court stated that, based on the above testimony, it was "perfectly logical and proper for the [trial] court to deduce that [co-defendant] Best was forced to take evasive action which resulted in a tragic vehicular collision." (Appendix at 21) Lastly, the

Appellate Court held that it would not substitute its judgment for that of the trial court on questions concerning evidentiary inferences and witness credibility. (Appendix at 21)

In summary, this Court lacks jurisdiction to decide the instant case on the question of sufficiency of the evidence where the decisions of the Illinois trial and appellate courts below rested on adequate and independent state grounds. Furthermore, the evidence presented at trial clearly established petitioner's guilt of reckless homicide beyond a reasonable doubt. As a result, petitioner was not denied his constitutional right to due process. Thus, certiorari should be denied in this case.

II.

THIS COURT LACKS JURISDICTION TO REVIEW THE INSTANT CASE ON THE ISSUE OF EXCESSIVENESS OF SENTENCE WHERE THE PETITIONER FAILED TO ASSERT ANY CONSTITUTIONAL OBJECTION TO THE SENTENCE IMPOSED AND WHERE THE ILLINOIS APPELLATE COURT'S RESOLUTION OF THE SENTENCING ISSUE WAS BASED ON ADEQUATE AND INDEPENDENT STATE GROUNDS AND FULLY COMPLIED WITH THE ILLINOIS STATUTORY SENTENCING SCHEME.

Petitioner contends that the Illinois Appellate Court erred in failing to reduce the sentence imposed by the trial court. (Petition for Writ of Certiorari at 41-43)

Respondent maintains that this Court lacks jurisdiction to review the instant case on the issue of sentencing because the petitioner fails to state any constitu-

tional objection to the sentence imposed. Jurisdiction is also absent in this case because the Appellate Court's resolution of the sentencing issue was based on adequate and independent state grounds and was in full compliance with the Illinois statutory sentencing scheme.

There is no federal question in the case at bar because petitioner failed to assert any. In claiming that the Illinois Appellate Court erred in failing to reduce the trial court's sentence, the petitioner deos not specifically state how this alleged error denies him any of his constitutional rights. There is no allegation in the Petition for Writ of Certiorari that petitioner's sentence violates his constitutional rights of due process, Eighth Amendment protection against cruel and unusual punishment, or any other constitutional provision. As stated earlier in

respondent's first argument, this Court has long held that it will not review a state court judgment that is based on adequate and independent state grounds, especially where it is not affirmatively and clearly shown that the state decision was decided on a federal question. Herb v. Pitcairn, 324 U.S. 118, 125-126, 65 S.Ct. 459, 89 L.Ed. 789 (1945); Michigan v. Long, ___ U.S. ___, 103 S.Ct. 3469, 3476, 77 L.Ed.2d 1201 (1983). Because there is no articulation of any violation of constitutional rights here, there is no federal question in this case. Accordingly, this Court does not have jurisdiction to decide the instant case.

In addition to the absence of a federal question, the decisions of the Illinois trial and appellate courts below were based on adequate and independent state grounds and the sentence imposed

fully complied with the Illinois statutory sentencing scheme. The Illinois Appellate Court did reduce the petitioner's sentence imposed by the trial court. The original sentence imposed was 30 months probation with the first 6 months to be served in the Cook County Department of Corrections and the last 90 days of the probation to require weekend periodic imprisonment. (Appendix at 35-41) Petitioner was convicted of three counts of reckless homicide. As the result of causing the deaths of three persons in this manner, he could have been sentenced to the Illinois State Penitentiary for a determinate term of anywhere from 1 to 3 years on each count. Instead, the trail court sentenced the petitioner to probation, subject to conditions.

On appeal, the Appellate Court of Illinois decided that according to the

Illinois statutory sentencing scheme, the trial court could have properly imposed certain special conditions of probation. Among the special conditions the trial court have imposed were : (1) a condition that up to 6 months of the probation be served as straight time in the county jail, or (2) a condition that up to 18 months of the probation be served as periodic imprisonment, or (3) that a condition of straight time combined with periodic imprisonment be ordered as special conditions of probation, but only if the straight time imposed did not exceed 30 days. The Appellate Court found that where, as a special condition of probation, straight time imprisonment exceeding 30 days was imposed, no periodic imprisonment could be imposed. The Appellate Court concluded, therefore, that the trial court improperly imposed straight time imprisonment of 6

months coupled with 90 days periodic imprisonment. Accordingly, the Appellate Court vacated the special conditions of petitioner's probation and remanded the case for the trial court to determine which of the special conditions should be imposed. (Appendix at 24-33)

In reaching its decision on this sentencing issue, the Appellate Court relied on well-established state law. The Appellate Court noted that the Illinois Supreme Court had previously held that sentencing is a matter of judicial discretion and that a reviewing court must not overturn a sentence imposed within the statutory limits unless there is a showing of abuse of that discretion. (Appendix at 23-24)

The Appellate Court also found that the two special requirements of imprisonment, taken separately, were justified

based upon "the unique objective and subjective circumstances presented in this case." (Appendix at 30) The Appellate Court noted that the trial court carefully considered the petitioner's age, background, family situation, and criminal background in fashioning its sentence for petitioner. This is especially true in light of the fact that the probationary period itself was imposed, rather than the statutorily permissible 1 to 3 year term of imprisonment for the Class 4 felony of reckless homicide. (Appendix at 26)

Lastly, in justifying petitioner's sentence, the appellate court cited the well-established principle that the rehabilitative potential of the petitioner is to be given equal weight to the seriousness of the offense in determining punishment. (Appendix at 27) Petitioner did not receive either the maximum or minimum term

of imprisonment for reckless homicide, but instead received the maximum probationary period coupled with a relatively short term of imprisonment. Considering that not one but three people were killed as a result of petitioner's conduct, his sentence cannot be considered excessive. Thus, the appellate court did not abuse its discretion in amending petitioner's sentence.

In summary, there is no federal question in this case as petitioner failed to articulate any violation of his constitutional rights. The decisions of the Illinois trial and appellate courts below were based on adequate and independent state grounds. Because of the absence of federal question and the adequacy of the state courts' decisions, the United States Supreme Court lacks jurisdiction to review the instant case. Accordingly, certiorari should be denied.

CONCLUSION

The People of the State of Illinois respectfully request that the petition for a writ of certiorari be denied.

Respectfully submitted,

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